

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

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JOSEPH COOPER,

Plaintiff,

V.

CAESARS ENTERTAINMENT CENTER,

Defendant.

Case No. 2:19-cv-02232-APG-DJA

ORDER

This matter is before the Court on Plaintiff's Second Motion/Application to Proceed In Forma Pauperis (#6), filed on March 5, 2020. The Court previously denied Plaintiff's First Motion/Application to Proceed In Forma Pauperis (#1) for being incomplete. (ECF No. 5). The Court will now review Plaintiff's Second Motion/Application to Proceed In Forma Pauperis (#6).

I. *In Forma Pauperis* Application

Plaintiff filed the affidavit required by § 1915(a). (ECF No. 6). Plaintiff has shown an inability to prepay fees and costs or give security for them. Accordingly, the request to proceed *in forma pauperis* will be granted pursuant to 28 U.S.C. § 1915(a). The Clerk's Office is further **INSTRUCTED** to file the complaint (ECF No. 1-1) on the docket. The Court will now review Plaintiff's complaint.

II. Screening the Complaint

Upon granting an application to proceed *in forma pauperis*, courts additionally screen the complaint pursuant to § 1915(e). Federal courts are given the authority to dismiss a case if the action is legally “frivolous or malicious,” fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). When a court dismisses a complaint under § 1915, the plaintiff should be given leave to amend the complaint with directions as to curing its deficiencies, unless it is clear from the face of the

1 complaint that the deficiencies could not be cured by amendment. *See Cato v. United States*, 70
2 F.3d 1103, 1106 (9th Cir. 1995).

3 Rule 12(b)(6) of the Federal Rules of Civil Procedure provides for dismissal of a complaint
4 for failure to state a claim upon which relief can be granted. Review under Rule 12(b)(6) is
5 essentially a ruling on a question of law. *See Chappel v. Lab. Corp. of Am.*, 232 F.3d 719, 723 (9th
6 Cir. 2000). A properly pled complaint must provide a short and plain statement of the claim
7 showing that the pleader is entitled to relief. Fed.R.Civ.P. 8(a)(2); *Bell Atlantic Corp. v. Twombly*,
8 550 U.S. 544, 555 (2007). Although Rule 8 does not require detailed factual allegations, it demands
9 “more than labels and conclusions” or a “formulaic recitation of the elements of a cause of action.”
10 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (*citing Papasan v. Allain*, 478 U.S. 265, 286 (1986)).
11 The court must accept as true all well-pled factual allegations contained in the complaint, but the
12 same requirement does not apply to legal conclusions. *Iqbal*, 556 U.S. at 679. Mere recitals of the
13 elements of a cause of action, supported only by conclusory allegations, do not suffice. *Id.* at 678.
14 Secondly, where the claims in the complaint have not crossed the line from conceivable to
15 plausible, the complaint should be dismissed. *Twombly*, 550 U.S. at 570. Allegations of a *pro se*
16 complaint are held to less stringent standards than formal pleadings drafted by lawyers. *Hebbe v.*
17 *Pliler*, 627 F.3d 338, 342 & n.7 (9th Cir. 2010) (finding that liberal construction of *pro se* pleadings
18 is required after *Twombly* and *Iqbal*).

19 In this case, Plaintiff attempts to bring claims under the Cherokee Constitution rather than
20 the United States Constitution or any other federal law. He appears to allege that he was subject
21 to harassment and complained to the EEOC. However, due to the paucity of allegations in the
22 Complaint, the Court is unable to determine whether he has raised a claim that invokes the
23 jurisdiction of this Court. Although it is not clear that the deficiencies identified can be cured, the
24 Court will allow Plaintiff an opportunity to file an amended complaint to the extent he believes
25 that he can state a claim.

26 **III. Conclusion**

27 Accordingly, **IT IS ORDERED** that:

1 1. Plaintiff's request to proceed *in forma pauperis* (ECF No. 6) is **GRANTED**. Plaintiff
2 shall not be required to pre-pay the filing fee of four hundred dollars (\$400.00). Plaintiff
3 is permitted to maintain this action to conclusion without the necessity of prepayment
4 of any additional fees or costs or the giving of a security therefor. This order granting
5 leave to proceed *in forma pauperis* shall not extend to the issuance and/or service of
6 subpoenas at government expense.

7 2. The Clerk's Office is **INSTRUCTED** to file Plaintiff's complaint (ECF No. 1-1) on the
8 docket.

9 3. The complaint is **DISMISSED WITHOUT PREJUDICE** providing Plaintiff with
10 leave to amend. Plaintiff will have until **April 17, 2020**, to file an amended complaint,
11 if the noted deficiencies can be corrected. If Plaintiff chooses to amend the complaint,
12 Plaintiff is informed that the Court cannot refer to a prior pleading (i.e., the original
13 complaint) in order to make the amended complaint complete. This is because, as a
14 general rule, an amended complaint supersedes the original complaint. Local Rule 15-
15 1(a) requires that an amended complaint be complete in itself without reference to any
16 prior pleading. Once a plaintiff files an amended complaint, the original complaint no
17 longer serves any function in the case. Therefore, in an amended complaint, as in an
18 original complaint, each claim and the involvement of each Defendant must be
19 sufficiently alleged.

20 4. **Failure to comply with this order will result in the recommended dismissal of this
case.**

21 DATED: March 27, 2020.



DANIEL J. ALBREGTS
UNITED STATES MAGISTRATE JUDGE